

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-15155

In the Matter of
JEFFREY A. LISKOV,
Respondent.

**DIVISION OF ENFORCEMENT'S
REPLY BRIEF IN SUPPORT OF ITS MOTION FOR
SUMMARY DISPOSITION AGAINST RESPONDENT JEFFREY LISKOV**

Respondent Jeffrey A. Liskov (Liskov") provides four reasons to support his argument that the ALJ should impose some sanction less than a permanent bar: 1) Liskov is financially ruined because of his conduct; 2) the publicity of the jury verdict against him in the underlying civil action is sufficient to accomplish the goal of deterrence; 3) Liskov needs to work in the financial services sector to pay off the disgorgement and fines assessed due to his conduct; and 4) his conduct was not "egregiously" fraudulent. None of these reasons are availing.

The first three reasons can be dismissed easily. None of those reasons address the factors set forth in Steadman v. SEC, 603 F.2d 1126 (5th Cir. 1979). Simply because Liskov is broke and allegedly unable to work outside the financial services industry does not mean that he should be given an opportunity to repeat the egregious fraudulent conduct for which the jury found him liable. Moreover, without the imposition of a bar, publicity alone cannot serve to prevent Liskov from repeating the conduct for which the jury found him liable.

Finally, by arguing that his fraud was not so egregious, Liskov is improperly re-litigating the jury's finding that he intentionally committed fraud and the relief entered by the judge. See James E. Franklin, Exchange Act Rel. No. 56449 (Oct. 12 2007) (where injunction entered after jury trial, Commission precluded "from reconsidering the injunction as well as factual and procedural issues that were actually litigated and necessary to the court's decision to issue the injunction"). Moreover, Liskov has misrepresented the Division's case and the jury's findings by improperly relying on snippets of counsel's closing argument to suggest a much narrower case than the case actually tried before the jury and that the court considered when ordering disgorgement and a penalty.¹ Liskov wrongly contends that the Division's case only involved disclosures regarding his forex expertise. Liskov Opp. at 2.

In advance of the trial, the parties stipulated to numerous facts. Stip. Facts (at Appendix, Exhibit C). The judge charged the jury that these facts were evidence and not disputed. 11/26/2012 Tr. at 8:19-25 (at Appendix, Exhibit A). Those facts reflect a much broader fraud than Liskov now tries to outline – a fraud that the jury was required to consider in rendering its verdict. For example, in the stipulations, Liskov admitted to opening three forex trading accounts in one client's name in February, May, and June of 2010 at Forex Capital Markets, LLC ("FXCM") without the client's explicit authorization. Stip. Facts ¶¶ 32-35 (at Appendix C). He admitted that he did so by sending documents to FXCM that he altered with whiteout. *Id.* ¶ 37. Liskov admitted that, from his client's perspective, there was no reason or benefit to opening more than one forex account. *Id.* ¶ 38. He admitted that he knew that, by opening additional

¹ Liskov repeatedly referenced a timeline used during the Division's closing argument and selectively quoted from counsel's argument. Liskov Opp. at 3 & 6. Although neither is evidence, for clarification, the Division has attached hereto a *complete* copy of counsel's closing argument as well as the timeline, both delineating the broader fraud. 11/26/2013 Tr. at 51-68 (at Appendix A); Timeline (at Appendix B).

accounts, trading losses in prior accounts would not count toward the calculation of his performance bonuses. *Id.* ¶ 9. To fund these accounts, Liskov admitted that, on six separate occasions from November 2009 through June 2010, he transferred money out of the client's brokerage account without her specific authorization. *Id.* ¶¶ 40-44, 47-49. He did so by altering prior transfer documents with the use of whiteout.² *Id.* ¶¶ 45-46, 49-50. He also admitted that in July of 2010 he opened an account at a new forex trading firm without the client's explicit authorization and that he signed the client's name to (i.e., forged) a document as part of the account-opening process. *Id.* ¶¶ 51-53. He also used altered documents to transfer funds from her brokerage account to the new forex trading firm.³ *Id.* ¶54.

After considering the evidence, including the foregoing stipulated facts, the jury found that Liskov *intentionally* (not negligently) committed a scheme to defraud four clients. Mot. Summ. Disp. at 4 & n.2. That scheme clearly encompassed each of the numerous instances he used whiteout over a ten-month period from November 2009 through July of 2010. The jury separately found a fraudulent failure by Liskov concerning the non-disclosure of his poor forex track record to those four clients. *Id.* at 4. Of those clients, the earliest ones became clients in November of 2008, and Liskov solicited an investment from the latest client in July of 2009. Stip. Facts ¶¶ 10, 16, 21. Moreover, contrary to Liskov's argument that he did not steal money (Liskov Opp. at 6), when ordering relief, the Court specifically found that he had fraudulently

² During the trial, Liskov admitted that he did not disclose to either FXCM or the client's brokerage firm that he had used altered documents. 11/14/2013 Tr. at 30:25-31:4 9 (at Appendix D). In addition, at trial he admitted that he did not disclose the account openings at the time that he opened the multiple accounts but dismissed the whiteouts as "shortcuts." 11/14/2013 Tr. at 26:3-19 (at Appendix D).

³ Liskov excused this conduct by arguing that the client saw confirmations after the fact. Liskov Opp. at 3-4. Such evidence (even if true, which it is not) is irrelevant because the Division need not prove reliance to prove fraud. SEC v. Tambone, 597 F.3d 436, 447 n.9 (1st Cir. 2010).

obtained money from his clients in the form of performance fees to support his own speculative ventures. Mot. Summ. Disp. at 5.

Liskov's failure to acknowledge, even now, the extent of his culpability and wrongdoing clearly evidences the need for a permanent bar. His fraud took place from November of 2008 through at least July of 2010. It included admitted multiple submissions of altered documents to financial institutions. The jury found that he *intentionally* committed a scheme to defraud as to four victims over an eighteen-month period. Given that he "only" acknowledges a breach of fiduciary duty and fails to take responsibility for his more egregious conduct, any opportunity to associate with a financial services institution only makes it likely that he will repeat the same conduct. The Division therefore respectfully requests the imposition of a permanent bar.

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its attorneys,

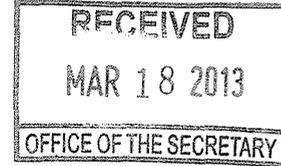


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Dated: March 15, 2013

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
February 21, 2013

ADMINISTRATIVE PROCEEDING
File No. 3-15155



In the Matter of

JEFFREY A. LISKOV,

Respondent.

**DIVISION OF ENFORCEMENT'S APPENDIX
IN SUPPORT OF ITS REPLY BRIEF IN SUPPORT OF ITS MOTION FOR
SUMMARY DISPOSITION AGAINST RESPONDENT JEFFREY A. LISKOV**

Respectfully submitted,

DIVISION OF ENFORCEMENT

By its attorneys,

A handwritten signature in black ink, appearing to read "D. Bernstein".

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Dated: March 15, 2013

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Declaration of Deena R. Bernstein

Exhibit A November 26, 2012 Trial Transcript

Exhibit B Time Line

Exhibit C Stipulated Facts

Exhibit D November 14, 2012 Trial Transcript

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

3 Civil Action
4 No. 11-11576-WGY

5 * * * * *

6 SECURITIES AND EXCHANGE *
7 COMMISSION, *

8 Plaintiff, *

9 v. *

10 JEFFREY LISKOV and EAGLEEYE *
11 ASSET MANAGEMENT, LLC, *

12 Defendants. *

13 * * * * *

14 **DAILY TRANSCRIPT OF**
15 **JURY INSTRUCTIONS,**
16 **CLOSING ARGUMENTS**
17 **and THE VERDICT**
18 (Volume 9)

19 BEFORE: The Honorable William G. Young,
20 District Judge, and a Jury

21 APPEARANCES:

22 SECURITIES & EXCHANGE COMMISSION (By Deena
23 R. Bernstein, Senior Trial Counsel and Naomi J.
24 Sevilla, Senior Enforcement Counsel), 33 Arch
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on behalf of the Plaintiff

DUANE MORRIS LLP (By Albert P. Zabin, Esq.
and Jennifer Mikels, Esq.), 100 High Street, Suite
2400, Boston, Massachusetts 02210, on behalf of
the Defendants

1 Courthouse Way
Boston, Massachusetts

November 26, 2012

1 way I explain it. If you don't understand it make me
2 explain it so you do. That is my responsibility.

3 Now, as I said, I'm going to try and create for you
4 a mental, or a legal framework. And that means I'm going to
5 talk about all aspects of the case. It doesn't mean that I
6 think anything is proved or anything is not proved. It
7 simply means I have to teach you how you would analyze this
8 or that if your analysis goes in a certain direction.
9 That's what this is. It's law teaching. So listen to the
10 whole charge. Don't pick out part of it and say, Aha, the
11 case turns on this or that. Not so. Listen to the entire
12 charge.

13 Now, let's talk about what tools you have to arrive
14 at a fair and a just verdict. Because I keep saying, well,
15 you've got to base your decision on the evidence. Well,
16 that's the tools you have. And what evidence do you have?
17 I'm going to go over the various sources of evidence. These
18 are the tools that you have.

19 Well, one thing you have, and this hasn't been
20 passed among you, but one thing you have are what the
21 parties have agreed to as stipulated facts. And there are
22 seven pages of stipulated facts, 55 different paragraphs,
23 that everyone agrees to. And the actual document will be
24 with you in the jury room. So you don't have any dispute
25 about any of those things. Those things are agreed to. No

1 because you didn't do what we said you didn't have to do,
2 then is this courtroom or any courtroom a safe place for
3 justice. I don't think that you will allow the government
4 to play games, not with people's lives.

5 Thank you.

6 **THE COURT:** Ms. Bernstein.

7 **MS. BERNSTEIN:** Thank you, your Honor.

8 And thank you, ladies and gentlemen of the jury,
9 for your time and your attention for the last two weeks, but
10 I want to get straight to the evidence.

11 For eight days -- at the beginning of this trial we
12 told you this case was going to be about an abuse of trust.
13 And now you got to hear five clients come in and tell you
14 how that trust was abused. It was abused through lies,
15 through material misrepresentations, omissions, because he
16 as a fiduciary had a duty to provide them with material
17 facts and to avoid them being misled. This isn't about
18 blaming the victim. This is his responsibility to make sure
19 they're not misled, and through a scheme to defraud. And
20 what does that scheme look like? It was a scheme that
21 started with the first investor, Mr. Bodi, and ended with
22 Mrs. Stott, August, excuse me, November of 2008 to August of
23 2010. It was to get investors in. It was to get
24 performance fees. And that's why performance fees matter,
25 because that was the intent, to get performance fees, and he

1 didn't care about the losses. And the losses do matter for
2 one issue, and that's scienter.

3 Before I go into the evidence I want to just
4 briefly summarize what the judge told you about the law. Of
5 course, what he says holds. If I have said something
6 incorrect don't listen to me, listen to the judge.

7 Question 1 and 2 are about the Investment Advisers
8 Act. You heard about what a material misrepresentation is.
9 That's also an omission. Because in this case he was
10 obligated as a fiduciary to disclose material facts, to take
11 reasonable care to avoid clients being misled. Any fact
12 that a reasonable, would have mattered to a reasonable
13 investor.

14 Also, let's talk about negligence versus scienter.
15 Negligence is carelessness. You heard that. There's really
16 not much more to be said. Scienter is either, either
17 intentional, you meant the result of your action, or
18 reckless, you took, you disregarded the consequences. You
19 were heedless of the consequences, you didn't care. And
20 that's also the element for 3a as well which is the
21 misrepresentations.

22 Let's just talk a little bit about the in
23 connection issue. You heard about stipulations. These are
24 facts that the parties have agreed are true. And you don't
25 have to worry about whether they're true or not. One of

1 those facts is Stipulation Number 5 which says specifically
2 that investors liquidated securities to invest in forex.
3 You've heard evidence through the trial that people had
4 money markets in securities and liquidated them to invest in
5 forex. But there is a general stipulation that covers that
6 issue. Scheme? What the scheme is here is to get people in
7 to get performance fees.

8 And let's talk a little bit more about the
9 stipulations. The stipulations are again those facts that
10 you don't have to worry about figuring out whether they're
11 true or not because the parties have agreed they're true.

12 Let's talk about what some of those stipulations
13 are. She opened, Mrs. Stott opened -- three accounts were
14 opened on Mrs. Stott's behalf at FXCM without her explicit
15 authorization, and they were not, it was not to her benefit
16 to open those accounts. He moved \$2 million. Again, it
17 benefited him. And how did he do both of those things? He
18 did it through the use of whiteout. If you're going to look
19 at any exhibit in this case, I suggest that you look at
20 Exhibit 261. That is his original -- that is Mrs. Stott's
21 client file. Those are the originals and the whiteouts. He
22 has told you that whiteouts are no big deal. In fact, he
23 said he didn't intend to mislead anyone. You look at those
24 whiteouts and you come to your own conclusion about whether
25 or not he wanted to mislead. Not only Mrs. Stott but

1 Fidelity and FXCM which goes to his scienter. Because he
2 wasn't telling people that he was whitening out. He didn't
3 put an initial next to it. He didn't make it clear at all.
4 And for FXCM it mattered that people opened each account
5 separately, that they signed off, because of that clean
6 slate that we've heard about all through trial regarding
7 performance fees. So, he was -- that shows his scienter.

8 As to the wire transfers, he says, oh, it's no big
9 deal that there's whitening out. Let's be very clear what a
10 wire transfer is. What a wire transfer is is no different
11 than a check. It's moving money from point A to point B.
12 He's saying it's no big deal. When you write a check for
13 \$60, sign your name, put a date, and then he comes behind
14 you, puts a couple of extra zeros on it, puts a new date and
15 sends it in. Yeah, that's your signature. But you didn't
16 authorize that money. And he did it repeatedly. And you
17 have sat here through eight days. You don't even have to
18 rely on anything other than what he himself did. He tried
19 to mislead Mrs. Stott, he tried to, and his intent is shown
20 because he didn't tell Fidelity or FXCM. He didn't actually
21 send her a copy of any of those FXCM accounts that were
22 opened, and he didn't send her a copy of a single one of the
23 documents or even pick up the phone to tell her.

24 And let's remember also the Deutsch Bank account
25 which is also in Exhibit 261, but that document he signed in

1 her name with no indication that he was not, he was signing
2 on her behalf, to Deutsch Bank. He forged her signature to
3 Deutsch Bank. It is also undisputed, though not in the
4 stipulations, that he didn't disclose his forex trading
5 record to any of the investors.

6 So the question is why did he do it? Why did he do
7 it? Well, it's money. Some good evidence of intent of you
8 meant what you were doing -- and by the way, this is
9 Exhibit 274 -- that you meant the consequences of your
10 action is that you were going to physically benefit from it.

11 Remember he told you that his own personal forex
12 trading had caused a strain on his finances. Remember he
13 told you that he had lost all of his retirement, \$400,000,
14 from January 2008 to July of 2010, that it was gone.

15 Remember also Exhibit 177 that we looked at at the
16 end of his cross-examination. That was his tax return in
17 2010. That of \$277,000 he made after business expenses, oh,
18 about \$215,000 of it was from two performance fees from Mrs.
19 Stott. And if you want to see more strain on his finances,
20 he also reported on that tax return a \$127,000 loss in 2010.

21 The scheme here, the intent was to get as many
22 investors in in the short run, to get performance fees, and
23 not care about losses in the long run. And by the way,
24 that's why we care about losses. One, because he starts to
25 figure out that he's no good at this, but he keeps on doing

1 it, which suggests that he had no, he didn't have the
2 interest of his clients but instead wanted to get those
3 performance fees. And it indicates generally why the track
4 record was, should have been so important and disclosed to
5 investors.

6 But now we're going to look at quickly the entire
7 time line. Because you've heard the evidence from, from
8 investor to investor, and maybe you haven't figured out how
9 this fits in timing-wise, so we created a time line to take
10 you from November of 2008 through August, through August of
11 2010.

12 I've got my clicker.

13 Here's what happened in November of 2008.

14 We've just lost -- well, I'm going to keep talking
15 because I only have 30 minutes.

16 In November of 2008 a couple of things happened.
17 Right? One, Mrs. Starrett gets invested in forex. I'm not
18 going to tell you who to believe between Mr. Liskov and Mrs.
19 Starrett. You're the jury. You're the ones who determine
20 credibility. She told you she didn't understand that she
21 was investing in forex, that he didn't explain foreign
22 exchange. All of those are material omissions, because he
23 had an obligation as a fiduciary to make sure that she
24 wasn't misled.

25 Mrs. Stott also got involved. She told, she told

1 you she didn't understand it was foreign exchange. She kept
2 on referring to it as the client. Again, you judge her
3 credibility versus Mr. Liskov's credibility. Okay? I'm not
4 going to tell you how to conclude that. But you have to
5 remember for there not to be fraud here you have to
6 disbelieve every one of the investors and believe Mr.
7 Liskov.

8 Also, and you didn't hear from this witness, Mr.
9 Bodi also invested \$26,000. And Mr. Liskov admitted that he
10 didn't disclose that by the end of November he had lost over
11 \$200,000 in forex trading for himself. That's a material
12 omission we would argue because as a fiduciary you have an
13 obligation. And let's talk about what happens next.

14 In January of 2009, this is the first time an
15 investor tells, tells Mr. Liskov you really might want to
16 think twice about investing in forex. So, if he didn't mean
17 the consequences of his actions which by the way included
18 losses, he starts to get a warning here that maybe he should
19 stop. But this is a scheme to defraud so he doesn't. And
20 by the way, this e-mail, which is Exhibit 33, also contains
21 Mr. Liskov's first apology to a client because he sent out a
22 bill that he felt that he shouldn't receive.

23 But what does he do next? What does he do with
24 that first apology? Instead, what he does is he seeks money
25 from Mrs. Starrett and Mrs. Stott. And Mrs. Starrett, and

1 you want to talk about more material omissions, Mrs.
2 Starrett gave a check for \$30,000 in January and another one
3 in April after money was lost in each one. He didn't tell
4 her the balance either time. Material omission. You're a
5 fiduciary. You have an affirmative obligation to make sure
6 that your clients are not misled. Those are both material
7 omissions. Mrs. Stott, the same thing happened. He didn't
8 tell her about the balances. That's a material omission.
9 But he also said that the investment was doing well, even
10 though the first \$100,000 was lost. That's a material
11 misrepresentation.

12 And then what does he do next? Mr. Striano. And
13 let's talk a little bit about puffery. Puffery as the judge
14 told you is about predictions in the future. That is not
15 what happened with Mr. Striano. Mr. Striano as you may
16 remember argued, asked pointed questions of Mr. Liskov. I
17 don't know what I'm doing. Do you know what you're doing?
18 Are you competent to do this? And he says I'm good at it.
19 In the context of that, and that's an affirmative
20 misrepresentation right there, he also was obligated, if
21 you're going to start talking about your performance, you
22 should probably also disclose what your performance, when
23 you say it's good, to give the full context -- and you heard
24 the judge talk about context -- to give the full context you
25 should disclose your trading record which by the way by

1 this point he had lost money for not only himself but for
2 Bodi, for Starrett, and for Stott.

3 July 2010. What happens at this point? He's lost
4 the money for Mr. Striano. This is the second time he
5 apologizes to a client and he says he's gun-shy, that he
6 didn't mean to do this. If he didn't mean to get money at
7 the, at the detriment of his clients he would have stopped,
8 or maybe he would have stopped right here. But he doesn't.
9 He doesn't stop. He gets more money from both Mrs. Stott
10 and Mrs. Starrett. And Mrs. Stott, there's an affirmative
11 misrepresentation because he says the investment is doing
12 well again, as well as material omission about the balance.

13 As to the, as to the wire, Mrs. Starrett told you
14 that she signed something in blank which means she never
15 knew that that \$50,000 was being wired and he never
16 disclosed it. You can decide the credibility between Mrs.
17 Starrett and Mr. Liskov on whether she trusted him enough to
18 sign something in blank after their years of working
19 together.

20 And then he gets another client involved and that's
21 Mr. Smith. And given the context, he said repeatedly, Mr.
22 Liskov said you need to be an expert, you need to be an
23 expert. Mr. Smith is hearing you need to be an expert, but
24 he doesn't disclose, oh, by the way I'm not one, because
25 I've lost all this money so far. Another material omission

1 and a material misrepresentation.

2 And then we get to Mr. McLaughlin. There he
3 actually puts his entire track record into -- he says he has
4 a good track record. You can decide whether that's
5 subjective or objective. But once you start talking about
6 your track record, at minimum shouldn't you actually
7 disclose what that track record is? Because if you just say
8 it's good, isn't that misleading.

9 So it's a material misrepresentation and a material
10 omission. And by the way, for the purposes of this jury
11 form, a material omission and a material misrepresentation
12 are the same thing. His silence is not an excuse. He had
13 an obligation to speak. So, if you feel that he didn't
14 disclose a material fact, that's a material
15 misrepresentation for the purposes of the jury form.

16 And now let's talk about that meeting with Mrs.
17 Stott. Because this is his only excuse for why it was okay
18 to open three accounts with whiteout and to move \$2 million,
19 is because he said she signed on to it generally.

20 Now, you heard her. She said I never gave him cart
21 blanche. I never said you could move \$2 million. He says
22 that she did.

23 Could we look at Exhibit 273 for a second.

24 And I just wanted you to look at this. You've seen
25 this during his cross-examination. This is what it looked

1 like for her. Because he got a clean slate for the third
2 account, the fourth account, and the fifth account, which is
3 the green, the red, excuse me, it's the yellow, the blue and
4 yellow. Apparently I'm color blind.

5 **MS. SEVILLA:** Red, blue, yellow.

6 **MS. BERNSTEIN:** Red, blue, yellow. Thank you. For
7 those three he got a clean, he got a clean slate. And he
8 admitted that those five, those extra accounts were not for
9 her benefit, that the only reason to do it was to get the
10 performance fees that you see right there. But he says she
11 agreed to it.

12 What do you think? Would anyone agree to a
13 situation where your investment adviser could lose money but
14 still make a profit for himself? Because that's what
15 they're saying, that's what he's saying she agreed to.

16 Let's go back to the time line.

17 And so there's what's happening in November and
18 December of 2009. He's starting, and this is in the
19 stipulations, the list of all the moneys that was moved
20 through the use of whiteout is actually paragraphs in the
21 stipulations you will have back in the jury room. And
22 you'll see that that happened twice in the November-December
23 time period.

24 You'll also remember that there was an \$80,000 wire
25 transfer of Mrs. Starrett where he admits that he used

1 whiteout. He admits to it. It was whiteout. His story?
2 That they were okay after the fact after they caught him;
3 that they figured it out afterwards and so it was okay.
4 Now, first of all, that's not credible. And that brings me
5 to an issue.

6 He keeps on blaming the victim, because they could
7 have figured out after the fact. One, reliance is not an
8 element, and two, you have an obligation at the time that
9 you do something to disclose that you're doing it. Finding
10 out a week later, two weeks later, three weeks later,
11 doesn't get you off the hook for failing to make a
12 representation or lying.

13 Now, the entry of 11-20 refers to an exhibit you
14 may remember. It's Exhibit 95. Whatever gave you the idea
15 that you were competent to trade in currency? You couldn't
16 have made this money disappear any faster if you were a
17 magician.

18 Here's another warning, the second warning, and a
19 pretty strong one, to Mr. Liskov: Stop. You don't know
20 what you're doing. And if he was looking after his clients
21 and he didn't intend the consequences of his action, or was
22 reckless, didn't really care about the consequences of his
23 action, wouldn't he have stopped here. And he actually
24 apologizes in December. And we saw that, right? That's
25 Exhibit 103. He apologized. If he means -- the way I think

1 we were all raised is that sometimes it's not our mistakes
2 but what we do after them, what we do next. If everything
3 before this was just bad judgment, just an oopsie, just a
4 mistake, wouldn't he have stopped. But he didn't.

5 After he apologized in December, he opened a third
6 account with the use of whiteout. He also took more money
7 from Mrs. Starrett without disclosing it to her. That's her
8 testimony. And by using the whiteout he got himself a
9 \$117,000 performance bonus he wouldn't have otherwise
10 gotten. And if you want to -- and if you don't want to
11 believe that this was him trying to commit fraud, let's look
12 at Exhibit 111.

13 This e-mail, Exhibit 111, as he admits was the top
14 of an e-mail from FXCM regarding the opening of the third
15 account. And he admits that this is an explanation of what
16 the e-mail below is. Nowhere does this say anything about
17 the opening of a third account. In fact, this e-mail is
18 done so she doesn't read the e-mail below. And what does
19 that suggest is that this related to stuff they did back in
20 October, which was the second account.

21 But here's the problem with that. The only way
22 this is true is because he took the documentation from the
23 second account, applied whiteout, and created the third
24 account opening documents. And he said that's why this is
25 accurate. He's trying to hide what he's doing. He's trying

1 to also get her not to read e-mails from FXCM. Nothing to
2 see here, especially because you're in Florida until May.

3 You can go back to the time line.

4 But here's the problem. She's coming back in May.
5 So he's got to figure out how to hide the fact that he's now
6 lost money in the first account, the second account, and
7 really by this point the third account. He has to hide what
8 he's done. And that's what he's doing here. Don't have any
9 illusions to anything the otherwise. He's hiding. And
10 that's great evidence of scienter. We all know that. If we
11 don't think we've done something wrong don't we come
12 forward. When we hide it means because we know that we've
13 done something wrong.

14 So he opens the fourth account, he moves \$600,000
15 in, he sets up a meeting for June 11th. Excuse me a minute,
16 I forgot the number of that exhibit. But he sets up the
17 e-mail, he sets up the exhibit, excuse me, he sets up the
18 meeting. But here's the problem. He loses the money
19 immediately. So then he has to open the fifth account. And
20 takes a million this time because when he shows her the
21 account balance and then shows her how to use the computer,
22 and I want to talk about that for a moment, he needs to show
23 a win. And so he has to open the fifth account. He also by
24 the way delays the meeting, right? Remember seeing that?
25 That the meeting didn't take place on June 11th, and that he

1 writes an e-mail, which is Exhibit 129, saying, oh, can we
2 put the meeting off. By the way, while he's telling her in
3 Exhibit 129 that he's sick in bed, he e-mails FXCM to tell
4 him that he's been taking an exam and has now just passed
5 it. That's Exhibit 134. So, was he sick in bed? Or was he
6 just trying to buy time so he would have profits in the
7 fifth account.

8 One of the issues here has been whether Mrs. Stott
9 had access to the FXCM computer website. She told you no
10 until June of 2010. He's been a little bit more all over
11 the place. He first told you, oh, I didn't give her
12 computer training until July. Then he said no, no, no, no,
13 I did it all along. I did it in November 2008 and in
14 October of 2009. During my cross-examination of Mr. Liskov
15 towards the very end of evidence we read his deposition, I
16 read his deposition into the record. In his deposition he
17 said that he didn't know she had access. He speculated that
18 she did because of the intelligence of the woman, but he
19 didn't know that she had access until June of 2010 and he
20 admitted that in 2010 he gave her computer training. And by
21 the way, remember what Mrs. Stott said, that he said it was
22 about installing software. And she was very surprised when
23 he actually showed up and said no, no, no, no. It's not
24 about software, it's about this. And that she told you that
25 she only had access to the one account.

1 Now, at this point let me just talk a minute before
2 we get into the events of July about her access and whether
3 she, other evidence that proves that she didn't have access.

4 Remember how many e-mails she sent saying every
5 time, the few times he sent her e-mail statements asking,
6 begging him to tell her the bottom line and to send her
7 something in the mail. If you want to look at those e-mails
8 that's Exhibit 29, 30, 88, 89, and 115. And by the way, 115
9 was an e-mail that was written in March right around the
10 time that he opened the third account and he sends her one
11 day's worth of information about the third account, not
12 really explaining it's about the third account.

13 **THE COURT:** Five more minutes, Ms. Bernstein.

14 **MS. BERNSTEIN:** And I want you all to look at
15 Exhibits 23, he mentioned it, but there's also Exhibit 24.
16 He told her I will take care of the FXCM e-mails. He didn't
17 want her to read them. He said I'm going to take care of
18 them. He gave you an explanation that it was about
19 administrative and that's what he meant. But it's not what
20 it says. You all look at it, and you're the judge of the
21 credibility and you're the judge of the evidence.

22 So now let's get to July quickly. 7-6, remember
23 that e-mail, it's either 130, 131, the losing my shirt
24 e-mail. She can now see what she's going on for the first
25 time and she's getting nervous and he's trying to calm her

1 down. And he says I'm not losing my shirt. That's evidence
2 of scienter because he's trying to hide what he's doing.
3 It's also truthfully a material misrepresentation because in
4 fact she did lose her shirt. She had lost so much money by
5 the time of that e-mail that the only way that you could
6 describe it is losing the shirt. But what he's trying to do
7 is not, to not be caught. Because let's face it, when
8 you're whitening out documents, you want to talk about intent
9 to defraud, that's intent to defraud and he doesn't want to
10 get caught.

11 On 7-15 he gets an e-mail from FXCM basically
12 firing him. And then on 7-21 they exchange e-mails and he
13 doesn't explain why he's been fired by FXCM, which is
14 because of excessive losses in the account.

15 And let's talk about the Deutsch Bank account. You
16 can look at the documents. He forges her signature. What
17 he was referring to regarding Deutsch Bank was her routinely
18 forwarding e-mails the way she always did. She didn't
19 understand what DBFX was. But finally she knows something's
20 the problem because that's 7-28 and that's e-mail 153.
21 Because that's when she finally has that conversation with
22 him while he's on vacation and she has finally looked at
23 some of the confirms and goes behind to figure out what's
24 happened. By the way, not her obligation. He's a
25 fiduciary. He had a duty to disclose. He never does. And

1 that's when this fraud started to unravel.

2 This case isn't about blaming the victim. It's not
3 about reliance. It's about material misrepresentations and
4 omissions, which, by the way, are the same for the purposes
5 of the jury form, as to five clients. It's also a scheme to
6 defraud that goes across all the clients. Because the
7 purpose of that scheme was to get as many investors in there
8 to invest in forex so he could get performance fees while
9 whatever happens to the client happens to the client.

10 We respectfully ask that you find Mr. Liskov liable
11 for fraud.

12 **THE COURT:** All right, ladies and gentlemen, just a
13 few words about how you conduct your deliberations.

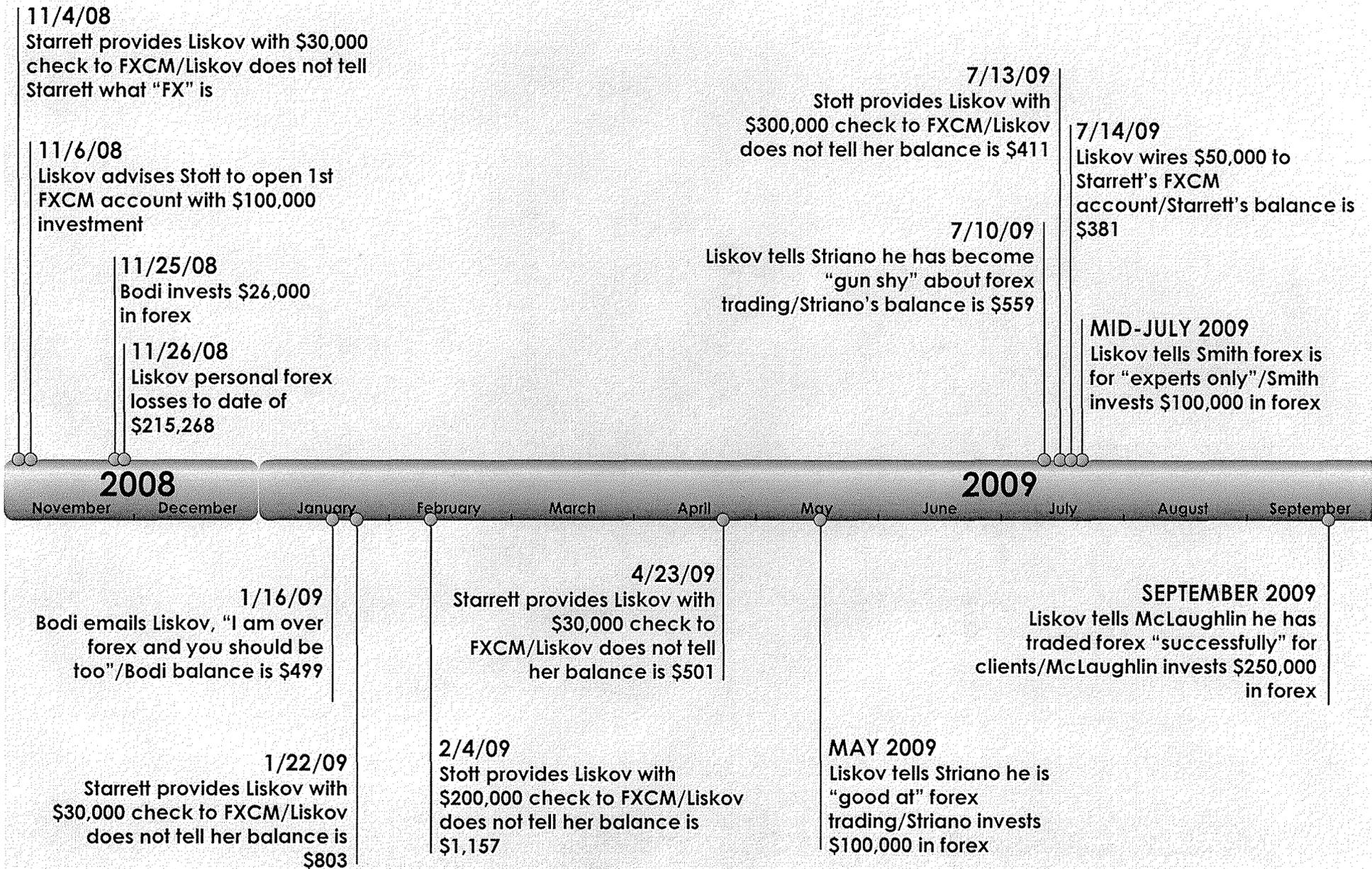
14 We'll send you out to the jury room now and you may
15 start your deliberations.

16 Mr. Foreman, as foreman it doesn't mean you do all
17 the talking, nor does it mean you keep your mouth shut. And
18 really I'm talking to all of you. Set things up in there so
19 that as you go through these questions and you analyze these
20 questions all twelve of you are engaged. That's what jury
21 deliberations are. Not nine of you talking about the case
22 and three of you watching them build the building next door.
23 Jury deliberations are deliberations of the entire jury.

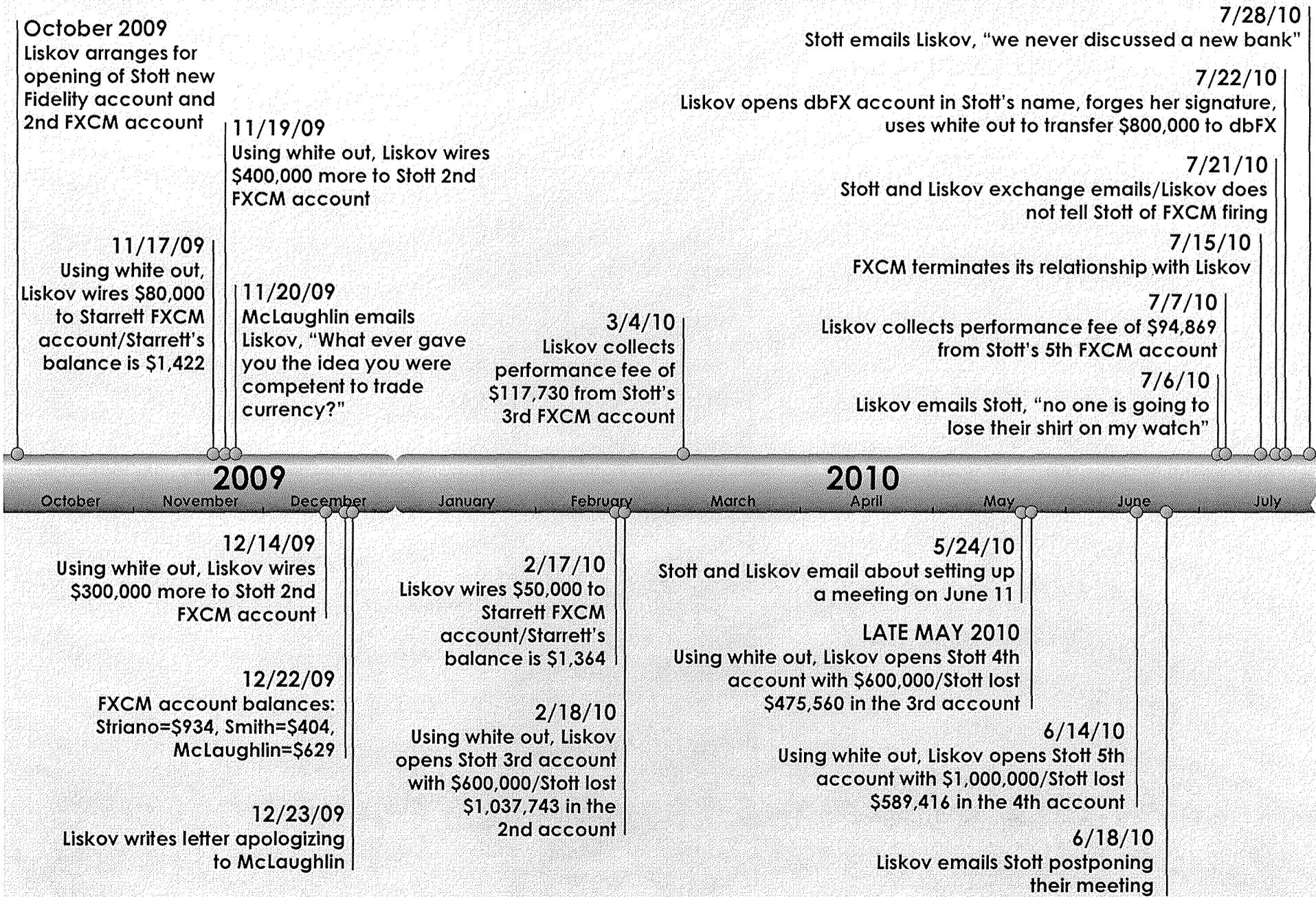
24 Now, during your deliberations you may use your
25 notes. Take your notes with you now. Don't pass your notes



Timeline of Key Events



Timeline of Key Events



UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
SECURITIES AND EXCHANGE)	
COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 11-CV-11576 (WGY)
)	
EAGLEEYE ASSET MANAGEMENT,)	
LLC, and JEFFREY A. LISKOV,)	
)	
Defendants.)	
)	
_____)	

STIPULATED FACTS

Plaintiff Securities and Exchange Commission (“Commission”) and Defendants EagleEye Asset Management, LLC (“EagleEye”) and Jeffrey Liskov (“Liskov”) stipulate that:

1. On April 9, 2008, EagleEye became registered with the Commission as an investment adviser.
2. Liskov operated EagleEye’s offices out of his home in Plymouth, Massachusetts.
3. Liskov was EagleEye’s sole officer, manager, and employee.
4. EagleEye and Liskov had a fiduciary duty to their investment advisory clients.
5. Beginning in 2008 and continuing through 2010, Liskov advised several clients to open foreign currency exchange, or “forex,” trading accounts at FXCM, LLC, an online retail currency firm, and to liquidate investments in securities and instead invest in forex.
6. FXCM required the customer to sign account opening documentation, including the LPOA, for each account opened in the customer’s name.

7. For each of the FXCM accounts of EagleEye's clients, a Limited Power of Attorney, or "LPOA," authorized EagleEye, and thus Liskov, to conduct trading in the account.

8. The LPOA for each of the FXCM accounts of EagleEye's clients contained a performance fee provision, which specified that EagleEye could earn performance fees on any net profits in the client's FXCM account for a specified time period.

9. FXCM's procedures did not take into account the performance in a customer's prior account or accounts before allowing a performance fee on gains in a new account in the name of the same customer, and Liskov knew this.

10. On November 21, 2008, Peter and Judith Starrett, who were advisory clients of EagleEye, invested \$30,000 in a forex account at FXCM, in which Liskov had trading authority.

11. EagleEye earned a performance fee of \$761.96 on profits in the Starretts' FXCM account in November 2008.

12. A total of \$270,000 of the Starretts' money was invested in their FXCM account between November 2008 and March 2010, and the trading losses in their FXCM account through July 2010 totaled more than \$250,000.

13. On November 25, 2008, Steven Bodi, an investment advisory client of EagleEye, invested \$26,000 in a forex trading account at FXCM, in which Liskov had trading authority.

14. EagleEye earned a performance fee of \$676.32 on profits in Bodi's FXCM account in November 2008.

15. By December 17, 2008, almost all of Bodi's forex investment was lost in trading, and the balance in Bodi's FXCM account was \$499.63.

16. On May 29, 2009, John Striano, an investment advisory client of EagleEye, invested \$100,000 in a forex trading account at FXCM, in which Liskov had trading authority.

17. EagleEye earned a performance fee of \$641.86 on profits in Striano's FXCM account in May 2009.

18. By July 10, 2009, almost all Striano's forex investment was lost in trading, and the balance in Striano's FXCM account was \$559.77.

19. On August 10, 2009, Striano invested \$30,000 more in his FXCM account.

20. By December 22, 2009, almost all of Striano's additional forex investment was lost in trading, and the balance in Striano's FXCM account was \$934.21.

21. On July 16, 2009, Gordon Smith, an investment advisory client of EagleEye, invested \$100,000 in a forex trading account at FXCM, in which Liskov had trading authority.

22. Liskov received a performance fee of \$5,872.64 on profits in Smith's FXCM account in July 2009.

23. By December 31, 2009, \$41,676.71 of Smith's \$100,000 forex investment was lost in trading.

24. On September 11, 2009, Neil McLaughlin invested \$250,000 in a forex trading account at FXCM, in which Liskov had trading authority.

25. By September 30, 2009, more than \$200,000 of McLaughlin's forex investment was lost in trading.

26. On October 13, 2009, McLaughlin invested \$35,000 more in his FXCM account.

27. As of November 20, 2009, the balance in McLaughlin's FXCM account was approximately \$2,499.

28. By December 22, 2009, almost all of McLaughlin's additional forex investment was lost in trading, and the balance in McLaughlin's FXCM account was \$629.91.

29. Patricia Stott was an investment advisory client of EagleEye.

30. Stott's First FXCM Account was opened in November 2008, in which she invested by checks \$100,000 on or about November 20, 2008, \$200,000 on or about February 4, 2009, and \$300,000 on or about July 13, 2009.

31. Stott's Second FXCM Account was opened in October 2009, and \$400,000 was wired into the account on or about October 16, 2009.

32. Stott's Third FXCM Account was opened in February 2010.

33. Stott's Fourth FXCM Account was opened in May 2010.

34. Stott's Fifth FXCM Account was opened in June 2010.

35. Stott did not explicitly authorize the opening of the Third, Fourth, and Fifth FXCM Accounts.

36. Liskov submitted account opening documentation to FXCM to open Stott's Third, Fourth, and Fifth FXCM Accounts.

37. Liskov used documentation from the opening of Stott's Second FXCM Account to create the account opening documents for Stott's Third, Fourth, and Fifth FXCM Accounts. Liskov whited out information on the Second FXCM Account opening documentation to create documentation to open the Third, Fourth, and Fifth FXCM Accounts.

38. There was no reason from Stott's perspective for five FXCM accounts to be opened in her name. Liskov could have accomplished his forex trading on Stott's behalf in a single account.

39. In October 2009, around the same time as the opening of Stott's Second FXCM Account, a new brokerage account was opened in Stott's name, with an account number ending in 4839. Stott had other pre-existing brokerage accounts.

40. Stott's signature was required by Fidelity Investments' Procedures to wire funds over \$250,000 out of the new brokerage account, and Liskov knew this.

41. Stott's signature was required by Fidelity Investments' Procedures to transfer funds between Stott's unlike-registered brokerage accounts, and Liskov knew this.

42. On or about the following dates, the following amounts were transferred to Stott's new brokerage account from other brokerage accounts of hers:

- \$400,000 on November 19, 2009;
- \$300,000 on December 10, 2009;
- \$600,000 on February 11, 2010;
- \$400,000 on May 21, 2010;
- \$200,000 on May 28, 2010; and
- \$1,000,000 on June 11, 2010.

43. The transfers to Stott's new brokerage account from her other brokerage accounts were transfers between unlike-registered accounts.

44. Stott did not explicitly authorize the transfers to her new brokerage account from her other brokerage accounts before they occurred.

45. Liskov arranged for all of the transfers to Stott's new brokerage account from her other brokerage accounts.

46. For all of the transfers to Stott's new brokerage account from her other brokerage accounts, Liskov used prior transfer request forms, used white out to change certain information, such as the prior request amounts, and faxed the prior requests as new requests in each instance.

47. On or about the following dates, the following amounts were transferred from Stott's new brokerage account to the following of Stott's FXCM accounts:

- \$400,000 on November 19, 2009 to the Second FXCM Account;
- \$300,000 on December 14, 2009 to the Second FXCM Account;
- \$600,000 on February 18, 2010 to the Third FXCM Account;
- \$400,000 on May 24, 2010 to the Fourth FXCM Account;
- \$200,000 on May 30, 2010 to the Fourth FXCM Account; and
- \$1,000,000 on June 14, 2010 to the Fifth FXCM Account.

48. Stott did not explicitly authorize the transfers from her new brokerage account to her FXCM accounts before they occurred.

49. Liskov arranged for all of the transfers from Stott's new brokerage account to her FXCM accounts.

50. For all of the transfers from Stott's new brokerage account to her FXCM accounts, Liskov altered prior transfer requests by whiting out certain information and faxed them as new requests.

51. In July 2010, Liskov opened an account in Stott's name at Deutsche Bank's forex trading platform, known as "dbFX."

52. Liskov opened the dbFX account online without obtaining Stott's explicit authorization before opening the account.

53. Liskov signed Stott's name to a document that he sent to dbFX as part of the account opening process.

54. On July 22, 2010, \$800,000 was transferred to Stott's new brokerage account from one of her other brokerage accounts pursuant to a transfer request that Liskov faxed. Liskov used a prior transfer request, used white out to alter the prior transfer request, and then faxed it as a new transfer request.

55. On July 23, 2010, \$800,000 was wired out of Stott's new brokerage account to her account at dbFX. Stott did not explicitly authorize this transfer at the time that it was made.

Respectfully submitted,

**SECURITIES AND EXCHANGE
COMMISSION**

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Dated: October 30, 2012

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS

Civil Action
3 No. 11-11576-WGY

4 * * * * *
5 SECURITIES AND EXCHANGE *
6 COMMISSION, *

7 Plaintiff, *

8 v. *

**DAILY TRANSCRIPT
OF THE EVIDENCE**
(Volume 6)

9 JEFFREY LISKOV and EAGLEEYE *
ASSET MANAGEMENT, LLC, *

10 Defendants. *

11 * * * * *

12 BEFORE: The Honorable William G. Young,
13 District Judge, and a Jury

14
15
16 APPEARANCES:

17 SECURITIES & EXCHANGE COMMISSION (By Deena
18 R. Bernstein, Senior Trial Counsel and Naomi J.
19 Sevilla, Senior Enforcement Counsel), 33 Arch
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21 and Jennifer Mikels, Esq.), 100 High Street, Suite
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the Defendants

23
24 1 Courthouse Way
Boston, Massachusetts

25 November 14, 2012

1 said do what you think is right and I am happy. Do what you
2 think is right. And that's what I thought I was doing.

3 Q So you think that when she said do what you think is
4 right that she meant using whiteout to open three accounts
5 and to move \$2 million without telling her that you were
6 doing it?

7 A Ms. Bernstein, that's not what I said. I don't think it
8 was right to use the whiteout. And, in fact, I'm going to
9 tell you that it wasn't procedure. It was a shortcut. It
10 was -- I wish I could go back in hindsight and say I would
11 have picked up the phone and just confirmed with her,
12 because I don't think we would be here right now. But the
13 whiteout itself was, was a shortcut. I mean, it was an
14 efficient way for me to move money from one account to
15 another which I thought I had authorization on. That's all
16 it was. And it wasn't, certainly it wasn't meant to hide
17 anything from Mrs. Stott or Mrs. Starrett as they were
18 getting notifications on every step of the way. The
19 whiteout created a paper trail. It didn't hide anything.

20 Q Now, you ultimately got a \$94,000 performance fee in
21 that fifth account, didn't you?

22 A I did. The fifth account rose in value to over
23 \$2 million in the June time frame. And again, we are back
24 to the question of not taking profits. But I did get paid a
25 performance fee on the money that the account rose in June.

1 People had given me the authority to make investments for
2 them without checking first with them. And so, if that were
3 the case, I might pick up the phone and just confirm that
4 they knew exactly what I was doing.

5 **THE COURT:** Go ahead, Ms. Bernstein.

6 **Q** Just to clarify a couple of things. You've actually
7 stipulated that Fidelity required Mrs. Stott's signatures on
8 all the documents that you were whiting out; isn't that
9 correct?

10 **A** Yes. And I think that's --

11 **Q** Okay.

12 **A** -- why I had a signature there.

13 **Q** Right. A new signature. That the whole idea of signing
14 a document is you get to see the document, right?

15 **A** Well, I think and I acknowledge the fact that I wish it
16 was an original signature as I sit here today.

17 **Q** Okay. And you also understood, in part because of the
18 performance fee issue, that FXCM required the client to sign
19 off on each account opening, and you stipulated to that,
20 too. You understood that, correct?

21 **A** I did. I understood that while FXCM clients was
22 watching, obviously we saw the letter, everything I did with
23 customers, that procedure-wise it was, it was certainly a
24 shortcut on their end as well.

25 **Q** Yes. By the way, you never told FXCM you were whiting

1 out documents to them, did you?

2 A No.

3 Q And you never told Fidelity you were doing that either?

4 A I did not.

5 Q Could we go back to Exhibit 131.

6 And she's referring to, and I just want to make
7 sure we see that, she's referring to \$600,000; is that
8 correct? In that e-mail, July 3rd, 2010?

9 A Right, she's referring to the 6,000 in 2009 that she --

10 Q Well, in fact, actually we can go back there. But it
11 was \$600,000 that got invested in the first account?

12 A Right.

13 Q In that very first account in November of 2008. That's
14 how much was invested in the first account.

15 A Correct.

16 Q Do you want me to go through it?

17 A Not at all, no. I agree with you.

18 Q Okay. And then she expresses concern at the bottom of
19 the e-mail: I do not want to lose my shirt. She told you
20 that, right?

21 A She did.

22 Q Okay. Can we go back up to the next e-mail.

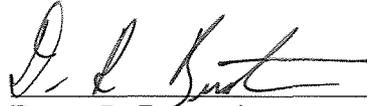
23 And this is your response on July 6th; is that
24 correct?

25 A Yes.

argument, the Division made use of a “time line.” Attached hereto as **Exhibit B** is a true and accurate copy of that time line.

3. The parties stipulated facts that were provided to the jury. Attached hereto as **Exhibit C** is a true and accurate copy of those facts.

4. On November 13 and 14, 2013, Liskov testified as part of the Division’s case in chief. Attached hereto as **Exhibit D** is a true and accurate copy of relevant portions of that transcript.



Deena R. Bernstein

Dated: March 15, 2013